No. 80-854

Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1980

LEONARD J. KERPELMAN,

Petitioner,

vs.

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

LEONARD J. KERPELMAN
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In Proper Person

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QUESTIONS PRESENTED FOR REVIEW

I. Has an attorney who has been suspended from practice for two years under a new state "Disciplinary Code" and required to pay $9000 in "costs" before being permitted to resume, been denied Due Process under the Federal Constitution:

A. By the absolute failure of the Maryland Court of Appeals, by apparent neglect, to rule upon the Petitioner's most important exception to the findings of the master, namely, the effect of an invoice clearly designating the agreement between the attorney and client as a retainer agreement. The Maryland court refused to correct its oversight by granting a rehearing when the omission was called to its attention by a motion for reconsideration. The effect of the invoice in question is to provide complete exoneration on two of three charges.

Also, the court delegated its justiciating function to only one of its

seven members.

B. By the creation of a new type of court proceeding, or court, which

1. is applicable to practicing attorneys only, provides no checks or balances, and entirely fails to provide elemental Due Process safeguards.

2. refers its proceedings to a "master" or "examiner" without the consent of the defendant.

3. provides by explicit rule that no defect in "procedure" can be claimed as error, and matters of substance are called procedure.

4. holds proceedings pursuant to a "clear and convincing evidence" rule, but exceptions to the master or examiner's findings will not be reversed except "where clearly erroneous," thus swallowing up the clear and convincing evidence rule, and making it ineffective; such interpreta-

tion of "clear and convincing" is in conflict with USCCA constitutionally based interpretation.

5. All of which is in complete opposition to Article IV of the Maryland Constitution, which by setting up a specifically enumerated number of courts and proceedings, which do not include this court or proceeding, has constitutionally defined Due Process in a manner which would be persuasive to this Court.

C. By, in effect, requiring conviction by something far less than "clear and convincing evidence" when such a standard is constitutionally required by federal Circuit Court of Appeals decision in conflict with Maryland decision.

D. By the provision of an appeal by way of "exceptions" only, which is not a Due Process appeal but is arbitrary and limited.

E. By the usurpation by the Court of Appeals of the right to define courts and proceedings which is a right reserved to the people by Article IV of the Maryland Constitution.

F. By conviction of an attorney for ethical violations upon the mere uncorroborated testimony of a disgruntled client.

G. By conviction of an attorney for an ethical violation, over what was clearly a bona fide fee dispute only.

H. By the court adopting an unwarranted inference that the Petitioner had on other occasions not part of the charges here, advised clients to disregard a court order. There was no such substantive evidence in the case.

I. By a finding that the attorney was guilty of this overbroad "violation": "A lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law."

J. By being subjected to a forfeiture of $9000 as a condition of resuming practice.

II. Has the Petitioner been denied Equal Protection of the Laws by being subjected to a type of proceeding not applicable to any other member of the population?

III. Has the Petitioner been denied his right to a trial by jury in derogation of the Fifth, Seventh, and Fourteenth Amendments to the federal Constitution?

IV. Are First and Fourteenth Amendment rights violated by conviction of an attorney for an ethical violation consisting of allegedly advising a client, in an emergency situation, to rescue his young daughter from danger and abuse and the company of an accused burglar-rapist, although custody had some time before been awarded to the child's mother who then took up living with the accused person, without any evidence showing any imminent threat to the administration of justice?

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Judgment Sought to be
Reviewed

IN THE COURT OF APPEALS OF MARYLAND

Miscellaneous Docket
(Subtitle BV)

No. 1

September Term 1979

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND

vs.

LEONARD J. KERPELMAN

...Leonard J. Kerpelman shall stand suspended from the practice of law in this state for the period of two years accounting from thirty days from the date of this opinion. He shall stand suspended beyond that date unless and until all costs incurred in connection with this proceeding are paid in full.

It is so ordered, Respondent shall pay all costs as taxed by the clerk of this court, including the costs of all transcripts pursuant to Maryland Rule BV15c for which sum judgment is entered in favor of the Attorney Grievance Commission against Leonard J. Kerpelman.

Filed: September 5, 1980

Order on Rehearing Requested

IN THE COURT OF APPEALS OF MARYLAND

Miscellaneous Docket
(Subtitle BV)

No. 1

September Term 1980

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND

VS.

LEONARD J. KERPELMAN

ORDER

Upon consideration of the motion for reconsideration filed in the above entitled case, it is this 26th day of September, 1980,

ORDERED, by the Court of Appeals of Maryland, that the motion for reconsi-

deration be, and it hereby is, denied.

Robert C. Murphy
Chief Judge

Filed: September 26, 1980

Bill Showing "Retainer"

STATEMENT

LEONARD J. KERPELMAN
ATTORNEY AT LAW
1303 STANDARD OIL BUILDING
BALTIMORE, MARYLAND 21202
PHONE 727-8700 OR 367-3055

DATE 1/16/76

Mr. John D. Malcomb
218 Parkholme Circle
Reisterstown, Maryland 21136

DETACH AND MAIL WITH YOUR CHECK. YOUR CANCELLED CHECK IS YOUR RECEIPT

DATE REFERENCE	CHARGES	CREDITS	BALANCE
BALANCE FORWARD →			
Further retainer	$1,000.00		
Paid 12/16/75		$500.00	$500.00

RESPONDENT'S 15TH EXCEPTION
EXERPTED FROM RESPONDENT'S
"EXCEPTIONS"

* * *

No. 15:

Levin ignored the existence and receipt, as a matter of law, of the bill of January 16th which clearly set forth that the fee paid by Malcomb and the fee paid by Draper were each "retainer" fees, and thereby refuted any evidence that the arrangement in the cases was a "flat fee" arrangement; the January 16th bills were nowhere explained by Levin.

RESPONDENT'S 27TH EXCEPTION
EXCERPTED FROM RESPONDENT'S
"EXCEPTIONS"

* * *

No. 27:

As to Draper, the Record contains a clear inference that he was under the influence of cocaine when he testified before Levin; as a matter of law an attorney cannot be found guilty for a disciplinary violation upon the testimony of one under the influence of cocaine.

RESPONDENT'S 29TH EXCEPTION
EXCERPTED FROM RESPONDENT'S
"EXCEPTIONS"

* * *

No. 29:

The witness Draper testified in the case, and then after suspicions were aroused on the part of the Respondent, an Interrogatory was submitted to him asking whether he was on cocaine at the time he testified. Draper took the Fifth Amendment. Levin refused to strike the testimony. Levin accepted the word of Draper as to what had happened over the word of Kerpelman. This exception is that as a matter of law an attorney may not be found guilty under a "clear and convincing proof" test where the only evidence against the attorney is the uncorroborated testimony of a person who took the Fifth Amendment as to whether he was under the influence of cocaine when he testified.

RESPONDENT'S 30TH EXCEPTION
EXCERPTED FROM RESPONDENT'S
"EXCEPTIONS"

* * *

No 30:

The averments of exception 29 are hereby adopted by reference: Levin's refusal to strike Draper's testimony was severe and substantial error.

RESPONDENT'S 34TH EXCEPTION
EXCERPTED FROM RESPONDENT'S
"EXCEPTIONS"

* * *

No. 34:

It is an abuse of, and a denial of Due Process to have the fact inquiry made by reference, in effect, to a master, and the question of disposition performed by this court; it is only in the course of a full-fledged fact finding inquiry that the true context, coloration, background, and proper inferences relating to disposition can be acquired; the procedure being used here is therefore invalid.

MARYLAND CONSTITUTION

* * *

ARTICLE IV

JUDICIARY DEPARTMENT

Part 1--General Provisions

Section 1. Judicial power vested in enumerated courts; courts of record; seals.

The Judicial power of this State shall be vested in a Court of Appeals, and such intermediate courts of appeal as shall be provided by law by the General Assembly, Circuit Courts, Orphans' Courts, such Courts for the City of Baltimore as are hereinafter provided for, and a District Court; all said Courts shall be Courts of Record, and each shall have a seal to be used in the authentication of all process issuing therefrom. (1966,c. 10, ratified Nov. 8, 1966; 1969, ch. 789, ratified Nov. 3, 1970; 1977, ch. 681, effective Nov. 7, 1978.)

"BV RULES"
Vol 9B
"Rules of the Court of Appeals of Maryland"
Annotated Code of Maryland, Michie (1950)

* * *

Rule BV9. Charges

a. Who May File.

Charges against an attorney shall be filed by the Bar Counsel acting at the direction of the Review Board.

b. Where Filed and Heard.

Charges against an attorney shall be filed on behalf of the Commission in the Court of Appeals. The Court of Appeals by order may direct that the charges be transmitted to and heard in any court and shall designate the judges to hear the charges and the clerk responsible for maintaining the record in the proceeding.

c. Form.

The charges shall be in writing and shall be sufficiently clear and specific reasonably to inform the attorney proceeded

against of any misconduct charged and of the basis of any allegation that he is incompetent.

d. Service.

The Court of Appeals shall direct in each case the manner of service of a copy of the charges which shall be served together with the order of the Court of Appeals designating the court and panel of judges to hear the charges.

e. Pleadings.

1. Motion for Transfer.

Within fifteen days following the service of the order designating a court in which the charges shall be heard, the attorney charged may move in the Court of Appeals for a transfer of the hearing to another court. Action on the motion is in the discretion of the Court of Appeals. Filing the motion shall not stay the time

for answer to the charges. Procedure on the motion is governed by the applicable provisions of Rule 855 (Application for Order--Motion--Answer).

2. Time for Initial Pleading.

The attorney responding to the charges shall file his initial pleading in the court designated to hear the charges within fifteen days after the date of service of the charges upon him, unless a different time is fixed by the order of the Court of Appeals.

3. Subsequent Pleadings.

Subsequent pleadings shall be governed by and filed in the court designated to hear the charges within the times set forth in the applicabie provisions of Chapter 300 (Pleading) of these Rules pertaining to pleadings in equity.

(Amended May 5, 1976, effective July 1,

1976.)

Rule BV 10. Hearings.

a. Discovery--Same as in Civil Case.

Chapter 400 of these Rules governs the taking of depositions and discovery in the hearing of charges.

b. Procedural Defects.

The hearing of charges shall not be stayed or challenged by reason of any procedural defects alleged to have occurred prior to the filing of charges.

c. Number of Judges.

The charges shall be heard by not less than three (3) judges.

d. Hearings--Conducted as Civil Case.

The hearing of charges is governed by the same rules of law, evidence and procedure as are applicable to the trial of civil proceedings in equity. Factual find-

ings shall be supported by clear and convincing evidence.

* * * *

MARYLAND DECLARATION OF RIGHTS

Article 27.

That no conviction shall work corruption of blood or forfeiture of estate.

* * * *

ANNOTATED CODE OF MARYLAND
Oath Of Attorneys At Law

Article 10, § 10

§ 10.Form.

Every attorney or other practitioner at law shall in open court take and prescribe the following oath or affirmation: I do solemnly swear (or affirm) that I will at all times demean myself fairly and honorably as an attorney and pratitioner at law; that I will bear true allegiance to the State of Maryland, and support the laws

and Constitution thereof, and that I will bear true allegiance to the United States, and that I will support, protect and defend the Constitution, laws and government thereof as the supreme law of the land; any law or ordinance of this or any State to the contrary notwithstanding.

* * * *

CONSTITUTION OF THE UNITED STATES

Article 1, Section 9:

No Bill of Attainder or ex post facto Law shall be passed.

*

Amendment I:

Congress shall make no law . . . abridging the freedom of speech . . .

*

Amendment V:

(Rights of Accused In Criminal Proceedings)

No person shall be held to answer

for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

*

Amendment VII:

(Trial by Jury in Civil Cases)

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall

be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

*

Amendment XIV:

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Judicial 'Usurpation'

In a recent opinion in a murder case appeal, Judge Charles E. Moylan, Jr., of the Court of Special Appeals, complained that rules of the courts are having the effect of laws, which are only supposed to be written by elected legislators. He asks, "Why have . . . editorial writers . . . been so unalert to usurpation on the part of one branch of government to the sovereign prerogative of a coordinate branch of government?" He thought that was a rhetorical question, but he doesn't know editorial writers. We don't often pass up a chance to answer a question.

The answer is that we, like most other citizens, have not been aware that rules of procedure have in fact become the equivalent of legislative-written new law. We have been too busy complaining that judges' *decisions* are too often the equivalent of legislative-written new law. In fact, as we understand the case that provoked Judge Moylan's complaint, an opinion of the Court of Appeals requires the same outcome as the rule in question. (A murder defendant's trial conviction was overturned because police did not take him before a court commissioner promptly enough.)

Even if Judge Moylan is wrong on the case in question, he has performed a very valuable public service by calling the public's attention to the rule-making power of the Court of Appeals and to the impact of such rules. Technically the rule-making procedure is open to the public, but in fact neither the legislature nor the general public pays any attention or plays any role. The rules are written, reviewed and approved by a small, select group of lawyers and judges. That there is no public input is not so much their fault as it is that of the rest of us.

Judge Moylan's answer to his own question is that editorial writers, (and lawyers, legislators and others) have been unalert to judicial usurpation of the legislative function because "we have grown so used to deferring to the judicial branch at the level of interpreting the Constitution, where such deference is appropriate, that we have been lulled by habit into deferring to the judicial branch even at the sub-constitutional level, where such deferrence is dangerously inappropriate."

We believe that to be true. We also believe that tolerance for the almost complete insulation from public opinion that judges and the courts have traditionally enjoyed is coming to an end. Thoughtful complaints like Judge Moylan's are part of a growing general, national frustration with the pervasiveness of the judicial branch of government in everyday life. The New Right is more upset by court decisions thwarting laws and ordinances than it is by laws and ordinances. Almost every state has adopted some formal mechanism for reviewing the administration of justice. This year a federal law setting up an oversight mechanism for federal judges was enacted. The defeat of one sitting Supreme Bench judge here last spring, and the near-defeat of another November 4, are omens.

An independent judiciary is vital in a constitutional democracy. But there is such a thing as a too-independent judiciary.

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

Reference to Reports

Attorney Grievance Commission of Maryland vs. Leonard J. Kerpelman, Md. , A.2d .

Grounds for Invoking the Jurisdiction of this Court

(i.) The judgment of the Court of Appeals of Maryland sought to be reviewed was rendered and entered on September 5, 1980; also the Order denying reconsideration dated September 26, 1980 (referred to in ii).

(ii.) An order respecting a re-hearing, by denying the Petitioner's Motion for Reconsideration was passed by the Court of Appeals of Maryland, dated Steptember 26, 1980.

...

(iv.) Jurisdiction to review the judgments in question is conferred by Title 28 USCA ℙ 1257(3).

Constitutional Provisions, Statutes and Regulations

1. U.S. Constitution

First Amendment (Free Speech Clause),

Fifth (Self-Incrimination, Due Process, Jury Trials in Criminal Cases),

Seventh (Jury Trials, Civil)

Fourteenth (Due Process)

The above are set out in the Appendix.

2. Article 10 Section 10 Annotated Code of Maryland, Michie (1950): Attorney's Oath of Office. In Appendix.

3. "BV Rules". Vol 9B, "Rules of the Court of Appeals of Maryland", Annotated Code of Maryland, Michie (1950). In Appendix.

4. Article IV. Md. Constitution on the Judiciary. In Appendix.

STATEMENT OF THE CASE

An attorney of over 30 years standing, with an unblemished record who had represented many unpopular clients and difficult causes, has been suspended from practice for two years and required to pay $9,000 in "costs" before

he can resume practice.

The new Maryland procedure in these cases is peculiar. The case is heard before a judge, but he serves as a "master" or "examiner" --which of these, is not clear --but it is the Court of Appeals which sits as a nisi prius court. It decides the matter itself in the first instance.

Exceptions may be filed to the report which the examiner renders. The Court of Appeals then holds oral argument on the exceptions, and passes down a judgment based on the report, after ruling on the exceptions.

The procedure itself, the Petitioner here contends, and argues hereafter, offends against fundamental Due Process. That federal question was raised by preliminary motion before the examiner's hearing, and by specific exception in Exception Nos. 34 and 36 addressed to the Court of Appeals; in addition, each of the other exceptions filed to the examiner's report was clearly a Due Process exception

but for one --which was an ex post facto law exception, but that is dropped.

The examiner's report finding the attorney guilty was rendered on the entirely uncorroborated testimony of two former clients testifying separately in unrelated cases. They did not corroborate each other. One stated in cross examination that he "lied when it was to his advantage" and was apparently refuted in an important respect by an invoice placed in evidence by the party who called him.

The other was apparently testifying while under the influence of cocaine.

Supposedly the standard of proof for conviction was by "clear and convincing evidence," but the phrase has never been measured in a Maryland case except by language used in a libel action and which is in apparent conflict with an interpretation of "clear and convincing" used in a federal

Circuit Court of Appeals decision. This court should resolve that conflict, it will be argued below.

Both of the complaining clients were fathers who had been sucessful in their difficult custody cases, but became complainants after they had been submitted modest bills by the attorney. These modest bills created some of the issues below.

John Malcomb's bill at the close of his case was $750 over and above the $1000 he had paid before. But he claimed the fee agreement was for a flat fee. The attorney testified that that could never be done in a custody case, that the $1000 first paid was a retainer only. The unrefuted evidence was that fairly promptly --three weeks after a portion of the $1000 was paid --Malcomb was mailed an invoice (Appendix P.) stating that the payment which had been made was on a "further retainer" (he had hired the Petitioner on a retainer six months before).

This invoice was actually offered in evidence by the Grievance Commission itself. Under all the cases, it is bound by its own evidence.

The Petitioner's 15th exception raised this point and that the bill, as a matter of law, refuted Malcomb's oral testimony that there was a flat fee arrangement; it made the point that as a matter of law the invoice made the proof against the Petitioner insufficient under a "clear and convincing proof" standard. It was an exceedingly important exception.

The Maryland court ignored --or there is evidence that it forgot --exception 15. It did not discuss it. Instead, it accidentally lumped it with exceptions pertaining to the bias of the examiner, and only said that the contentions "of bias and prejudice etc." of the examiner were without merit. (Opinion P.18). Nothing else.

The court was re-requested to rule by Petitioner's Motion for Reconsideration. It turned down the motion out-of-hand within a day; apparently by immediate return mail!

This was a most serious denial of Due Process --committed by what, under the procedure, is a nisi prius court --it was a denial of the right to be heard.

Exception No. 15 appears in the Appendix.

The Petitioner is in the unusual position that because no appeal is provided from the nisi prius court, he can only raise this issue of denial of Due Process here.

The second complainant was David Draper. His child had been taken off by his wife who had custody under a temporary Maryland Decree, and she moved into a New York slum area apartment with the child, to

live with a boy friend who was then an accused burglar-rapist and who, it was alleged, had abused the child by throwing her across the room.

While a petition to the Maryland court to change temporary custody was being prepared, Draper went to New York and got his child back.

He claimed it was done on the advice of the lawyer. The lawyer denied it, but nevertheless challenges here, the Free Speech and Right to Counsel constitutional validity of a "disciplinary rule" which prohibits an attorney advising a client to violate a civil court order.

Draper immediately left town after testifying, but because of certain suspicions he had aroused in the mind of a knowledgeable aide of the lawyer's he was further questioned (by both sides) by written interrogatories at a further deposition. He there claimed

the protection of the Fifth Amendment when asked "were you under the influence of cocaine when you testified before Judge Levin?"

The Petitioner moved before the examiner to strike Draper's testimony because of the cocaine question and answer on, clearly, Due Process grounds. This was refused. That refusal and the sufficiency to convict, of such tainted testimony, particularly under a "clear and convincing evidence" standard, were both challenged, again clearly as a matter of Due Process, before the Court of Appeals by Exceptions 27, 29 and 30. These were denied. The exceptions appear in the Appendix.

ARGUMENT

The Bill

Perhaps the most serious disregard

of the Petitioner's Due Process rights by the Court of Appeals, was a simple failure to rule on the effect of a document put into evidence by the Attorney Grievance Commission itself (called the Petitioner below, and therefore "Petitioner's Exhibit #3." See Appendix) and rule on whether the Grievance Commission was bound by it.

The Petitioner here had been accused below of "escalating" a fee by quoting to one John Malcomb an alleged flat fee for handling of his custody case and then later sending him an additional bill.

However, unknowingly, the Grievance Commission had offered into evidence the entire batch of bills which had been sent to Malcomb, and among these was the very first bill which he had been sent which referred to his initial payment in this matter as a "further retainer" (emph. supp.) (called "further" because he had been represented by this Petitioner about six months before and had paid an earlier retainer).

This bill, as has been said, was submitted by the Grievance Commission and, according to all authorities, it was bound by its own evidence, its own submission.

Neverhteless, it then sought to impeach its own evidence, which is likewise impermissible, see Wignore. It sought to imply that the bill was a recent manufacture, but presented not an iota of evidence to that effect. It sought to squirm out of its embarassment. To no avail. The bill was in, it is clearly authentic as any of the other bills, and Mrs. Ruth Williams, the elderly bookkeeper and billing clerk of the Petitioner testified unequivocally that it was an authentic bill and that she recalled the very time that it went out with some perhaps thirty other bills to other clients in the regular course of business.

There can be no question but that the bill was sent out in the regular course of business with other bills, as a matter of

course. Mrs. Williams' testimony was brief, appears in the transcript of the hearing indexed under "Ruth Williams" in the Record. "Every lawyer is entitled to the presumption that he is honest and acting in the best interest of those whom he is employed to represent..." In re Fisher, 179 F 2d 361 C.A. Ill (1950).

The matter of this bill was raised below by the Petitioner in his Exception No. 15.

Yet this clear and convincing evidence in the Petitioner's favor was absolutely not treated of by the Court of Appeals in its Opinion, but instead the court said (at P.28):

> "Kerpelman is in error when he suggests that the trial judge came to a'conclusion that Malcomb had been overcharged'. He reached no such conclusion. He determined, as we have earlier indicated, that Kerpelman represented to Malcomb that his total fee for represen-

> tation would be $1000 and no more, but that in violation of this agreement Kerpelman charged or attempted to charge Malcomb fees over and above the agreed upon amount (after the case was over), that Kerpelman made a willful misrepresentation to Malcomb as to the fee, and that Kerpelman maliciously and improperly escalated the fee charged to Malcomb without any basis, without any agreement, without any warning and without the escalated charges bearing any relationship to the amount of work done."

All of which the bill belies. Either the original charge was a flat fee or it was a retainer. The bill shows that it was a retainer. Also, the Commission was bound by its evidence. Apparently, being at a loss to explain how Malcomb could have been sent a bill which said "retainer" if in fact he had been "maliciously and improperly" charged an

additional fee at the close of the case, of $750, for the recovery of his child's custody, the court simply ignored the problem of the bill, did not discuss it. This, the Petitioner respectfully suggests, is a most egregious denial of Due Process.

The question of the "retainer" and the bill are specifically raised in Petitioner's Exception No. 15 in the Court of Appeals proceeding below; and it is clearly a Due Process exception:

> "Levin ignored the existence and receipt, as a matter of law, of the bill of January 16th which clearly set

> forth that the fee paid by Malcomb (was a)...'retainer' fee, ...and thereby refuted any evidence that the arrangement in the case was a 'flat fee'... The January 16th (bill was) nowhere explained by Levin."

The Court of Appeals entire and only treatment of Exception No. 15 is the following (at P.18 of its Opinion):

> "10-16 inclusive - alleged Bias, Prejudice, Etc., of Judge Levin.
>
> "These contentions are without merit."

That is all the court ever said of the question of the bill. Apparently, the bill so confounded the Court of Appeals that it could not face the task of treating of it. Or perhaps it was simply overlooked. But it is not permissable, constitutionally, to overlook a practicing attorney right out of business. That is a denial of Due Process.

So although the Maryland Court of Appeals purports to provide for review by way of exceptions, here, in this most impor-

tant exception, it provided no review and therefore the Petitioner was denied, completely, Due Process.

Delegation of Decision-Making Function

Incidentally, the Petitioner would now make the point that apparently the Maryland court clearly delegated its decision making function to Judge Smith, who wrote the Opinion. This is entirely, and it is respectfully suggested, irrefutably, clear from the fact that not one of the seven appeals court judges seems to have noticed the failure to rule on Exception 15. It is unmentioned by any. Fairness in Due Process requires that the judging function be performed; here it appears to have been delegated, as all seven would not have made the error and oversight of treating No.15 as a matter of "Bias, Prejudice, Etc. of Levin". The exception has nothing to do with any bias or any "etc," of Levin. It has to do with the bill alone, which is never mentioned in the Opinion.

Due Process Invalidity of Non-Consensual Reference to a Master

The objection of the Petitioner by Exception 34 concerning the case being referred to a master was turned down out-of-hand by an impatient court which merely flicked a figurative fly-whisk at the idea, as if constitutions were too tedious to be of real concern. The court's entire disposition:

> This is yet another of his contentions for which Kerpelman cites no authority. For generations, in proper circumstances (emph.supp) courts, state and federal, including the Supreme Court of the United States, have made use of masters who have heard the evidence after which the ultimate disposition has been made by the court. This contention is without merit.

The statement might be correct if both parties had consented. Cases will be cited in a moment. But the Petitioner had not consented. He had protested. His exception to the Court of Appeals was ex-

plicit: "It is a denial of Due Process to have the fact inquiry made by reference, in effect, to a master..." (Exception 34).

The court was entirely wrong in its opinion in assuming it had any right, given Due Process as a limitation, to use a master without consent. There is a unanimity of opinion, it is believed, that such procedure violates federal Due Process.

The Due Process invalidity of what the Maryland court did, is relatively simplistic encyclopedia law. 30 A. CJS Equity, Section 522, states in the headnote:

> "It is ordinarily not proper for the court to refer the whole cause to a master to determine all issues, except with the consent of the parties."

In discussing what might be a proper reference and what might not be,the CJS article goes on to say:

> It is ordinarily not proper for the court to abdicate its functions by referring the whole cause to a master to

try and determine all of the issues without the consent of one of the parties, but it may do so by consent of the parties." Citing the leading case of Kimberly vs. Arms, Ohio, 9 S.Ct. 355, 129 U.S. 512, 32 L.Ed. 764.

And which case, of this court, holds:

A master in chancery is an officer appointed by the court to assist it in various proceedings incidental to the progress of the cause before it, and is usually employed to state accounts, to take court testimony, and perform such duties as require computation of interest, the value of annuities, the amount of damages in particular cases, the auditing and ascertaining of liens upon property, and similar services...

It is not within the general province of a master to pass upon all the issues in an equity case, nor is it competent for the court to refer the entire decision of the case to him without the consent of the parties. It cannot, of its own motion, or upon the request of one party, abdicate its duty to determine by its own judgment the controversy presented, and devolve that duty upon

> any of its officers. But a reference by consent of parties, of an entire case for determination of all its issues, though not strictly a submission of the controversy to arbitration... is a submission... to a tribunal of the parties' own selection..." (Emph. supp.)

Perhaps, however, the hearing official herein was a master not an examiner. He did make "findings of fact and conclusions of law." Willy nilly then, he could be a master.

Where then, was the consent? It did not exist.

In either case, disbarment, suspension, attorney discipline are exceedingly serious matters, too serious, to permit of involuntary submission to either a master or examiner.

This new procedure was adopted in Maryland, among the first states anywhere. It has since been adopted in others. At least six, it is believed, so far.

Presumably, since the master or examiner in the case is in fact otherwise a state circuit judge, the usual rules as to non-consensual reference will be said by the Respondent not to apply.

However, no cases so hold, it is believed, for disbarment or attorney discipline cases. These are not light matters similar to stating accounts, or appraising property.

The court should grant certiorari to settle this new and important question.

Usurpation of Constitutional Authority to Establish New Courts or Forms of Trial as Denial of Due Process

Recently, one of Maryland's own judges of the intermediate appellate level, spoke in a matter related to this case only indirectly. It was un cri de coeur. On November 7, 1980 this normally placid,

unemotional and conservative judge of the Court of Special Appeals, in as harsh a judicial pronouncement as memory serves ever to recall, castigated the Maryland Court of Appeals use and misuse of its rule-making authority in the criminal law areas as:

> "...(a)profound issue that desperately calls out for public attention, and public concern..."

He then called on the General Assembly of Maryland to take action against the Court of Appeals, and asked,

> "Why have bar associations, editorial writers[1] and concerned citizens been so unalert to usurpation on the part of one branch of government, of the sovereign prerogative of a coordinate branch of government?..."

The judge was so disturbed by this "usurpation", in fact, that in an unprecedented statement in the Opinion, he actually invited someone --anyone --to file a citizen's lawsuit challenging such misuse of

[1] See Baltimore Sun editorial which followed in Appendix.

the Court of Appeals' rule-making power!

--Concurring Opinion of Moylan, J., in Porter v. State, Md. App. , A.2d. , decided November 7, 1980.

Judge Moylan is respected as a fine and sensitive citizen and legal scholar. Apparently, if Judge Moylan is disturbed, something may be very much amiss, in a Due Process sense, where the Court of Appeals' exercises in rule-making are concerned. The problem is, that by its rule-making power, the Court of Appeals has created a new court and a new procedure, or trial form, --for lawyers only. It cannot do so.

> "The judicial power of this state (according to Article IV, Section 2 of the Constitution) shall be vested in a court of appeals, (the circuit courts), and justices of the peace," and there is no power in the legislature to provide for any other courts (emph.supp.) Woelfel v.State, 177 Md. 494 (1939).

If the legislature cannot create new courts or court systems, neither can

the Court of Appeals.

Casting further doubt on the procedure is the question of whether, having appointed a master, a sort of one-man administrative board, to do its work for it, the court has the right to leave his findings essentially unreviewable.

> "Administrative boards are not clothed with judicial authority, which the legislature has no power to confer upon them, and their decisions when they impair personal property rights are not irreviewable." Heaps v. Cobb, 185 Md. 372, 45 A.2d 73 (1945).

This Court is asked to note that the Court of Appeals adopts the master's finding unless "clearly erroneous" and there is no place to go on appeal. No place.

In Day v. Sheriff of Montgomery County, 162 Md. 221, 159 A. 602 (1932), the Court of Appeals held that an act creating a police justice for the town of Tacoma Park, to be appointed by the governor on the recommendation of the Mayor and Council of the town,

was invalid under Article IV, Section 2 of the state Constitution.

Lack of Checks and Balances; a Monolithic Danger

As has been said, contrary to its own cases, the Court of Appeals has attempted to do the very thing it has prohibited, that is, to create a new court, and a new form of court procedure bearing a further danger: that is the harshness and unchecked or balanced control of the procedural system. It cannot pass Due Process muster, it is believed.

It provides that the Court of Appeals approves certain "Inquiry Panels", that the panels shall act, that the Court of Appeals shall approve charges to be made by them, that the Court of Appeals shall appoint the prosecutors in the form of Grievance Commission staff, that the Court of Appeals shall appoint a master to conduct the hearing, that the master shall report his findings of fact and conclusion of law to the Court of

Appeals, and that the Court of Appeals shall act upon those findings. They also provide that no "procedural" errors may be taken advantage of by the defendant (BV 10b) and they state that the proof shall be by "clear and convincing" evidence only, but, as pointed out elsewhere, they do not define clear and convincing. A later definition, referred to herein in another section is -- mushy.

It is a monolithic and highly dangerous system.

--Both as an unlawful usurpation of constitutional power and as an unlawful procedural system, as it amounts to a denial of Due Process under the Fifth and Fourteenth Amendments to the U.S. Constitution.

Reductio ad Absurdum?

Would it not be surprising to suggest that in a criminal case if a defendant waives his right to a jury trial that the court

would, over the defendant's objection, have the right to submit the matter to a master, and not bother to observe the witnesses, weigh the manner in which they testify, their demeanor on the stand, their bearing during cross-examination, and all of those concommitants of a trial which are purported to enable the tryer of fact to come to correct conclusions on inferences, credibility, and the weight to be accorded to various testimony?

The idea that a criminally accused could be relegated to a trial before a master who makes findings, or before a hearing examiner who reports back to the court, would be bizarre even in some lesser places in the world than the United States. It is suggested that to try an attorney in Maryland by such a means is no less bizarre and no less a denial of Due Process than to try a criminal that way.

Spevack v. Klein, 87 S.Ct. 626,

385 U.S. 511, permits our now sometimes desperate brotherhood to claim as its due at least that same consideration in the courts, as to constitutional guarantees, as others.

It is respectfully suggested that this Court should grant certiorari to further delineate the vitality of Spevack, particularly as to whether it prohibits a mere master's hearing to supplant a trial, in trying and convicting a lawyer.

Conflict with Legislative Act

Maryland Code Article 10 § 15 (Michie, 1957) provides by statute for grievance procedures against attorneys.

Apparently it was never repealed, yet by Rule issued February 10, 1975, the Court of Appeals purported to change the procedures to the present "master" or "examiner" procedures.

It would appear to be a violation of Due Process.

An Inference Entirely Unwarranted

The Petitioner was charged with advising one person only, Draper, to violate a court order.

Out of a clear blue sky, however, supported by no substantive evidence in the case whatever,the Court of Appeals baldly states, at the end of its Opinion, P.41:

> Although we may infer from the proceedings here that the Draper matter is not the first and only instance in which Kerpelman had advised self-help on the part of his clients, in disregard of a court order, such other instances may not be used in determining the sanction...

But its use in determining guilt has obviously, by the court's statement, not been excluded!

A breathtaking example of Due Process denied and abused, it is respectfully suggested.

Since there is no Maryland appeal, will not this Court grant certiorari?

The safety and independence of the bar is put at risk by such haphazard judicial conduct.

Denial of Due Process by Failure to Properly Observe the "Clear and Convincing Evidence" Standard; a Conflict of Interpretation of that Standard with a Federal Court of Appeal

It is stated that clear and convincing evidence is required in the proceedings (Rule BV 10d). In Terrazas v. Vance, 577 F.2d 7 it was held that this means that all ambiguities must be resolved in favor of the respondent. (P.12 bot. column 1).

The Maryland court admits that "clear and convincing" means something, but it does not say just what, other than, in the opinion, at P.19 to say that proof beyond a reasonable doubt "is a higher standard than proof by clear and convincing evidence as required in defamation cases..." How much lower a standard is not stated, nor is the "resolution of ambuiguities" test made the standard; instead one is simply left to conjecture as to how much lower than "beyond a reasonable

doubt": which is a conflict with the Terrazas holding.

The Maryland court's adoption of this apparently lower requirement might be permissible if there were no constitutional standard involved.

But the Terrazas case, at P.11 particularly,indicates that the "clear and convincing" requirement --if not, in fact, a "clear and convincing and unequivocal" requirement --arises out of Due Process constitutional considerations where an "individual's substantial interest" is at stake.

The Terrazas court quotes Justice Harlan, that "a standard of proof represents an attempt to instruct the fact finder concerning the degree of confidence our society thinks he should have in the correctness of his factual conclusions for a particular type of adjudication". From In Re Winship, 397 U.S. 358, 370, 90 S.Ct. 1068, 1076, 25 L.Ed. 2nd., 368 (1970).

Whatever the Clear and Convincing Standard Means, It Was Misapplied in the Malcomb Matter so as to Deny Due Process

Judge Levin (the master) in his recommendation to the Court of Appeals cited one instance when Malcomb lied --in backdating his separation to get an earlier divorce --and said that apart from this, he found Malcomb's testimony to be consistent. But during the trial, in Malcomb's cross examination, it was also shown that Malcomb had in October 1976 misrepresented his situation to the Attorney Grievance Commission, and had made statements concerning the lawyer's representation which were not true, for example:

1. That he had had custody of two children and lost one, whereas his wife was in fact asserting her right to custody of both, and but for the attorney, Malcomb might well have lost both instead of gaining secure custody of one.

2. That the Petitioner never communicated with him during the trial.

3. That the Petitioner failed to use information he supplied.

Malcomb's statements concerning his ex-wife's discovery of some literature, used as her excuse to leave him, varied at different times, and disagreed with the wife's story. At various times he said:

1. She found it concealed in the cellar.

2. It was in the trash about to be thrown out.

3. It was old literature he had concealed and forgotten about.

4. It came in the mail.

5. A friend gave it to him.

It was repeatedly shown that Malcomb's memory was inaccurate.

Malcomb clung during the trial to the assertion that the Petitioner had promised him a "flat" fee, but he did not make

this allegation until October 1976, on the advice of an attorney hired to defend Petitioner's fee suit.which claimed a total fee for the whole case of $1850.

(The members of the Attorney Grievance Inquiry Panel all agreed that the amount originally billed was not in itself excessive or unreasonable; one of the local judges hearing the fee dispute stated that the value of services rendered was clearly greater than the fee paid, and explicitly stated that a grievance was not justified in the circumstances.)

Malcomb's own letter hiring the Petitioner asked what his "retainer" would be; later he tried to say that only $500 of the $1000 that he had paid by May 1976 was a retainer; that the rest paid before trial was the balance of the total fee. Not until 1979 did he deny getting Petitioner's bill of 1/16/76 which clearly identified the entire $1000 as a retainer. It was not dis-

puted that this bill was among the Petitioner's subpoenaed office records, and all the testimony was that it was sent in the ordinary course of business.

In early July 1976 Malcomb paid $50 on a bill for a "further retainer" of $650; he admitted he did not at this time make any protest about this bill or that it was a retainer but testified in 1979 that he concealed from the Petitioner that he did not intend to pay it. On July 29, 1976 Malcomb carried out his admittedly preconceived plan to not pay: he acheived this by asserting in a letter to the Petitioner of that date that Petitioner did not inform him promptly of a decision made by the judge in his custody case on 7/20/76 and that therefore no further payment to Petitioner was justified. He further alleged in this letter that the Petitioner told him, after 7/20/76, that the judge had not decided the case and that he was still working to affect the custody de-

but none are keyed to this formal charge of "any other conduct".

It is respectfully urged that the court consider granting certiorari on this point, as if this catch-all charge--never before ruled upon by this court --is valid, then Grievance Commissions have carte blanche to make their own determinations of propriety in an entirely unrestricted manner, and practicing attorneys will be completely at sea, without guidance of any sort.

Monetary Penalty; Bill of Attainder? It is Violative of Due Process

If conviction of a disciplinary violation is not a crime nor even a quasi-crime then the court is without any right to impose a monetary punishment, certainly so in the absence of any statute, and there is no statute. All that there is is the court's own usurpation of power by its rule-making, and it is only by its own self-made rule that it

cision.

The Petitioner denied that he had withheld information as to the proposed order of 7/20/76. He was, in fact then recommending challenge of the award of support payments for the child not placed in the father's custody. If it were not challenged, the order would have been passed. No evidence was brought forth, other than this client's unsupported word that Petitioner concealed this decision from the client. In view of the client's clear and freely expressed interest in avoiding payment of the fee, Petitioner argued that any doubt should be resolved in his favor, and argues that the contrary finding arises from a misconception of the Due Process requirement set forth properly in Terrazas: that all ambiguities in this entirely word-against-word confrontation, particularly in view of Malcomb's several contradictions and statement that he "lies when it is to his advantage",

should have been "resolved in favor of the Respondent (the Petitioner)" and so could not have produced a conviction on the Malcomb matter.

Draper and Cocaine

Exceptions 27, 29 and 30 should have been granted. Not to is a denial of Due Process, when quite apparently Draper was under the influence of cocaine while actually testifying (he interposed the Fifth Amendment when asked about it; thus in effect he was not cross-examined). His testimony should therefore have been stricken.

Or, as a matter of Due Process, should not have been sufficient to provide "clear and convincing evidence" against the attorney.

Jury Trial?

In light of this Court's decision in Spevack v. Klein, 87 S.Ct. 625, deter-

mination that attorney disciplinary proceedings impose a "penalty" which permits the protection of the Fifth Amendment right against self-incrimination to be interposed, does not the same logic permit the election of a jury trial in the same proceeding because of the fact that the proceeding seeks to impose a "penalty"; or alternatively under the Seventh Amendment as being a "suit at common law, where the value in controversy ... exceed(s) Twenty-Dollars,..."; is not the holding of the Maryland court denying a jury trial in conflict with Spevack?

This latter argument would avail the Petitioner only if this court wished to rule that the Seventh Amendment(civil jury trials) is made applicable to the States by the Fourteenth.

The Fifth Amendment provision against self-incrimination nowhere speaks of a "penalty" but only of a criminal prosecution; nevertheless in Spevack v. Klein, 87 supra,

this Court quoting Malloy v. Hogan, 378 U.S. 1, said: "In this context 'penalty' is not restricted to a fine or imprisonment. It means... the imposition of any sanction which makes the assertion of the Fifth Amendment privilege 'costly'." And the court held that the Fifth Amendment privilege applies to an attorney disciplinary proceeding.

Likewise, the logic is the same, and the Petitioner should have been entitled to a jury trial under the Fifth Amendment for the same reason that the effect of the proceeding was to impose a severe "penalty" upon him. The Petitioner had claimed the right to a jury trial from the very outset and it was a specific subject of Exception No. 1 which he filed in the Court of Appeals.

Alternatively, clearly the matter involves an amount in controversy greater than $20 and by the Seventh Amendment the Petitioner would have the right to a jury,

if the Seventh Amendment is applicable to the states.

Petitioner was Convicted of Violation of a Fatally Overbroad Prohibition

The Petitioner at P.38 of the court's opinion was found to have engaged in "any other conduct that adversely reflects on his fitness to practice law".

The charges were neither further defined, nor restricted by the facts in the case, in any way that is discernable in the court's opinion.

Therefore, the Petitioner has been found guilty of an overbroad charge (P.38, Opinion) which informed him of nothing concerning what it was he had to meet.

Some question is raised by the Grievance Commission's recitation in another part of the charge, of facts concerning a large general mass of dealings with the two clients,

claims the power to impose a monetary penalty of around $9000, mostly in "transcript costs", on the Petitioner's right to resume the practice of law.

The U.S. Constitution prohibits federal Bills of Attainder[2] by Congress (Art.I Sec. 4). Maryland also, by its Declaration of Rights Article 27 ("No conviction shall work corruption of blood or forteiture of estate.") does the same.

By analogy, it is respectfully urged, for the Court of Appeals to impose such a penalty not permitted by statute, is surely a denial of Due Process.

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[2] Bill of attainder: An act, no matter what its form, that applies "either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial..." U.S. v. Lovett, 328 US 303 (1946)

It is a Denial of First Amendment Rights Made Applicable to the States by the Fourteenth to Unreservedly Prohibit an Attorney to Advise a Client to Disobey a Civil Court Order

Does the Court of Appeals of Maryland have the right to impose penalties and sanctions for advice given by an attorney

to a client? It is entirely disputed that the Petitioner ever advised any client to steal his child in violation of a court order.

But there is no dispute, that whatever discussion occurred between the attorney and client had to do with the safety of a young female child who had been taken to a New York slum by her mother, to live in company with an accused burglar-rapist, who was also alleged to have abused the child by throwing her across the room.

The Court of Appeals of Maryland was vehement in its opposition to such "contumacious advice.". (Opinion of the court pp .35,38,40,41)

The Maryland court is in conflict with numerous federal cases on the subject of punishment for contempt by words.

This is an area so close to the ancient and discredited criminal libel conception that discussion of it seems very

archaic. But nevertheless, in Wood v. Georgia, 82 S.Ct. 1364, 370 U.S. 375, 8 L.Ed. 2d 569, it was held to be impermissable to find the defendant guilty for speaking, unless the speech presented a "clear and present danger to the administration of justice", for "men are entitled to speak as they please in matters vital to them and although errors in judgment or unsubstantiated opinions may be exposed, they may not be exposed through punishment for contempt for the expression thereof."

To the same effect in Shepard v. Maxwell, 86 S.Ct. 1507, 384 U.S. 333, 16 L.Ed. 2d 600. In Craig v. Harney, 67 S.Ct.1249, 331 U.S. 367, 91 L.Ed. 1546 it was held that not only must the threat to the administration of justice not be remote, or even probable, but it must be such as would "immediately impel."

So if the court cannot prohibit, without a showing of clear and present

danger to the administration of justice, words which are claimed to constitute contempt of court, or contempt of a court order, then it seems that this court should state that it is a denial of Due Process to impose a penalty upon an attorney where no clear and present danger to the administration of justice has been shown or where it has not been shown that the conduct would "immediately impel" the administration of justice to be impaired.

On the contrary, all of the evidence in this case showed that the child in question was immediately brought before a Maryland court after it was returned, and the court rendered justice to the child as well as to the parents, and which court, itself, expressed no concern whatsoever that the activity of the father had constituted a threat to the administration of justice, an infringement thereof, or an impairment thereof. The only threat seems

to be to the rather royal feelings, to the majestic aura, which the Maryland court seems to be willing to place as an embellishment around itself.

It would be hoped that there would be some concern caused to this court when, in an area of delicate personal relationships and family problems, an attorney is subjected to severe censorship restrictions on what he may or may not discuss with a client.

The question of conversations relating to criminal activity do not arise in the context of this case whatsoever, of course.

CONCLUSION

Nicolo Sacco's "I am only a poor shoemaker..." speech and Bartolomeo Vanzetti's last speech to the court appear in many anthologies of American poetry. See

Untermeyer's for example. Although neither intended to be known as a poet, but rather thought of himself as a hardworking anarchist and labor agitator. Vanzetti's speech is a moving one as he throws his ideas into the teeth of the court:

> I found myself compelled to fight back from my eyes the tears and quanch my heart trobling to my throat to not weep before him. But Sacco's name will live in the hearts of the people when your name, your laws, institutions and your false god are but a dim rememoring of a cursed past in which man was wolf to the man.

They were not popular fellows, but they had no difficulty in being represented by one of the ablest of attorneys of the time: Michael Musmanno.

British soldiers accused in the Boston Massacre were represented by Samuel Adams. No problem.

Nobody retaliated against Adams or Musmanno. They went on to finer things.

Abe Fortas represented Gideon.

Louis D. Brandeis' clients before this court were many of them unpopular. Brandeis nevertheless managed to get by without being pounced upon, I believe.

In Marbury v. Madison, Marbury had no particular difficulty getting legal representation against a rather high public official.

One of the things that attracted this Petitioner to the practice of law after World War II, a most idealistic time, was its principled recognition that one of the high forms of service which an attorney could perform was to represent the downtrodden, the unpopular, the poor in public will, the distressed, the oppressed. Unpopularity of the clients' cause could theoretically do him no harm professionally. Wonderful.

It might be immodest for the Petitioner to say that thereafter, and over the

years, he had a tendency to carry outspoken advocacy of unpopular causes to something of an extreme. But though this might have been economically unwise, it was never dangerous. The Petitioner's record includes representing trees, socialists, swamps, beautiful buildings against parking lots and oil companies, and a rather extreme tendency also to take seriously his duty to complain about public officials when warranted. He was also involved in the School Prayer Case, representing the Petitioner, William Murray, in Murray v. Curlett, here.

Yet in thirty years, the Petitioner has never been found guilty of any sort of ethical violation whatsoever.

Now, however, with the institution of the new grievance procedures, his activities have become dangerous, for he is called by the Court of Appeals, "irritating"; they repeatedly, in the Opinion, dismiss his concerns as "frivolous" and "completely without

merit." After thirty years of honorable practice. He is beset with a thirty days trial in this case.

The practice of law will never be the same again if attorneys become vulnerable to a loose system of "attorney discipline." All will then have to toe the line, to march in lock-step. There is a serious conflict extant between the rights set up by this court for attorneys in the case of Spevack v. Klein, 87 S.Ct. 625, 385 U.S. 511, and the procedures in the present case. The procedures in question here are in direct conflict with Due Process decisions of this Court, and the Maryland court has created a miasmic horror in what is, in effect, a new, and constitutionally void type of procedure for trying attorneys. It amounts to a totally novel court of original jurisdiction restricted only to trying lawyers for misfeasance. It is devoid of the safeguards of fair trial generally recognized.

It is a dangerous departure --too far a departure, from the old peer-review system.

The Due Process questions were all raised and preserved below.

Should the procedures, and the conviction of this case not be reviewed, it is respectfully suggested that there will soon --very soon --come a time when the practice of law will have become restricted --to cowards, to reticent fellows, to those whose ways are conventional and whose thinking is not innovative.

The independence of the bar will be gone should these Maryland practices continue, and spread; and with independence, there also will go, the bar's consequent safety. --And its consequent freedom in protecting and forwarding and being concerned with, the interests of clients, of citizens.

The Court's power to disbar is not an arbitrary and despotic one to be exercised at the pleasure of the court or from passion, prejudice or personal hostility; but the court must exercise and regulate it by sound and just judicial discretion whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the court as the rights and dignity of the court itself. C.A. Ill. (1950)

In re Fisher, 179 F.2d 361, certiorari denied Kerner v. v. Fisher, 71 S.Ct. 59, 340 U.S. 825, 95 L.Ed. 606.

Respectfully submitted,

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In Proper Person